

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

AARON CARTER,

Plaintiff,

vs.

LOUIS J. PEARLMAN and
TRANSCONTINENTAL RECORDS, INC.
and LOUIS J. PEARLMAN ENTERPRISES,
INC.,

Case No. 2006-CA-4293

Division: 32

Defendants.

**AFFIDAVIT OF JAMES D. NGUYEN IN SUPPORT OF DEFENDANTS' MOTION TO
STAY FLORIDA PROCEEDINGS**

STATE OF CALIFORNIA
COUNTY OF LOS ANGBLES

Before me, personally appeared James D. Nguyen, who being duly sworn according
to law, deposes and says, as follows:

1. I am an attorney at law, duly licensed to practice before the courts of the State of California. I am a partner in the law firm of Foley & Lardner LLP, counsel for Trans Continental Records, Inc. ("Trans Continental"), a defendant herein. I have personal knowledge of the facts contained herein. If called upon to testify, I could and would competently testify thereto.
2. I am counsel of record for Trans Continental in a related case pending in the Superior Court for the State of California, County of Los Angeles, entitled *Trans Continental Records, Inc. v. Aaron C. Carter*, Los Angeles Superior Court Case No. BC 349317 (the "California Action"). I filed the California Action on March 21, 2006, before this Florida

action was filed. In the California Action, Trans Continental seeks declaratory relief from the Los Angeles Superior Court that its December 7, 2004 Recording Agreement with Aaron Carter is valid and enforceable, despite attempts by Carter to disaffirm the contract. I filed that action in Los Angeles Superior Court because the Recording Agreement was judicially affirmed by a order of judge from that court in 2005.

3. On May 22, 2006, I telephoned and e-mailed Jorge Hernandez, an attorney at the law firm of Holland + Knight in Miami, Florida. Mr. Hernandez had represented Aaron Carter by sending letters on Aaron Carter's behalf purporting to disaffirm the Recording Agreement. I asked in my voice mail message and e-mail whether Mr. Hernandez would accept service of the summons and complaint in the California Action on behalf of Aaron Carter. On May 23, 2006, I received an e-mail from Mr. Hernandez directing me to contact Michael Holtz, an attorney at the law firm of Lavelly & Singer in Los Angeles, who would be representing Aaron Carter in the California Action. On May 23, I e-mailed Mr. Holtz and asked whether he would accept service of the summons in the California Action on behalf of Aaron Carter. On May 25, 2006, Mr. Holtz replied by e-mail and agreed to accept service on behalf of Aaron Carter and asked me to send him the summons and complaint. A true and correct copy of the e-mail chain reflecting the foregoing is attached hereto as Exhibit A.
4. On May 26, 2006, I had the summons and complaint sent by hand-delivery to Mr. Holtz's office (which is in the building next door to my firm's building in Los Angeles). A true and correct copy of my May 26, 2006 cover letter is attached hereto as Exhibit B.
5. Although I had requested that Mr. Holtz return a counter-signed version of the May 26, 2006 letter that accompanied the summons and complaint, Holtz did not do so. Thus, on

June 2, 2006, I sent a follow-up letter to Mr. Holtz confirming service was effectuated on May 26. A true and correct copy of this letter to Mr. Holtz is attached hereto as Exhibit C. After receiving my letter, on June 2, 2006, Mr. Holtz sent me an e-mail stating that he thought he had returned an acknowledgment of service and confirmed that service was made on May 26. A true and correct copy of that e-mail and my response is attached hereto as Exhibit D.

6. On June 19, 2006, Mr. Holtz wrote me an e-mail requesting an extension of time to respond to the complaint in the California Action based upon the emergency hearing brought by Aaron Carter in this action. A true and correct copy of that e-mail is attached hereto as Exhibit E. On June 21, 2006, I responded to Mr. Holtz by forwarding an e-mail my partner, Michael Gay, in my firm's Orlando, Florida office, wrote to Clay Townsend, Aaron Carter's counsel in this action. In that e-mail, Mr. Gay asked Aaron Carter's counsel to agree to stay this Florida case until such time as the California Action determined the issues regarding the judicial approval of the Recording Agreement at issue in both cases. When I forwarded this e-mail to Mr. Holtz, I explained that, if no agreement was reached to stay this Florida Action, I was prepared to seek a temporary restraining order and/or preliminary injunction in the California Action to enjoin Aaron Carter from proceeding with this Florida action until the California Action is decided. A true and correct copy of this e-mail to Mr. Holtz is attached hereto as Exhibit F.

7. After further communication between Mr. Gay and Mr. Townsend did not yield any agreement to stay this Florida case, on the morning of June 26, 2006, I gave notice to Mr. Holtz (via telephone message, e-mail and faxed letter) that I would appear *ex parte* on June 27, 2006 in the California Action to seek a temporary restraining order and order to

show cause re: preliminary injunction to enjoin Aaron Carter from proceeding with this Florida action until the California Action is resolved, or in the alternative shortening the notice period to hold an expedited preliminary injunction hearing on the matter.

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

Executed this 20th day of June, 2006 at Los Angeles, California.


JAMES D. NGUYEN

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Sworn to and subscribed before me this 20th day of June 2006, by James D. Nguyen

- ☐ who is personally known to me; or
☒ who has produced California Drivers Lic. as identification




Notary Public - State of California
My Commission Expires: 08-11-07

Melissa Kimmett
Type, Print or Stamp Name of Notary Public

Nguyen, James D.

From: Nguyen, James D.
Sent: Thursday, May 25, 2006 4:25 PM
To: 'Michael Holtz'
Subject: RE: Trans Continental Records v. Aaron Carter

Thank you for the courtesy; I will do so.

-----Original Message-----

From: Michael Holtz [mailto:mholtz@lavelysinger.com]
Sent: Thursday, May 25, 2006 12:35 PM
To: Nguyen, James D.
Subject: RE: Trans Continental Records v. Aaron Carter

James:

I will accept service on behalf of Aaron Carter. Please send me copies of the summons and complaint, and we will confirm the date for Mr. Carter's response thereafter.

Best,

Michael

-----Original Message-----

From: Nguyen, James D. [mailto:JNguyen@foley.com]
Sent: Tuesday, May 23, 2006 5:34 PM
To: jorge.hernandez-torano@hklaw.com
Cc: Michael Holtz
Subject: RE: Trans Continental Records v. Aaron Carter

From the Desk of: James D. Nguyen

FOLEY
FOLEY & LARDNE

Thank you; I will follow up with Michael.

Michael – please let me know if you will accept service of summons on behalf of Aaron Carter.



-----Original Message-----

From: jorge.hernandez-torano@hklaw.com [mailto:jorge.hernandez-torano@hklaw.com]
Sent: Tuesday, May 23, 2006 3:04 PM
To: Nguyen, James D.
Cc: mholtz@lavelysinger.com
Subject: RE: Trans Continental Records v. Aaron Carter

James,

Please contact Michael Holtz of Lavelly & Singer in Los Angeles at (310) 556-3501 in connection with this matter. I have copied Michael on this email.

Regards,

Holland+Knight

Jorge L. Hernandez-Torano, Esq.
Holland & Knight LLP
701 Brickell Avenue, Suite 3000
Miami, Florida 33131
Main 305-374-8500
Direct 305-789-7721
Fax 305-789-7799
Email jorge.hernandez-torano@hklaw.com
Website www.hklaw.com

From: Nguyen, James D. [mailto:jnguyen@foley.com]
Sent: Monday, May 22, 2006 6:17 PM
To: jorge.hernandez-torano@hklaw.com
Subject: Trans Continental Records v. Aaron Carter

Jorge - this will confirm the voice mail I left for you. As I explained, we represent Trans Continental Records. We filed an action against Aaron Carter in the Los Angeles Superior

Court, seeking declaratory relief to enforce his recording contract with Trans Continental (given the disputes over Aaron's attempt to cancel or void various agreements he has with the Trans Continental companies).

Please let me know if you will accept service of the summons and complaint on behalf of Mr. Carter. I attach a courtesy copy of the summons and complaint (without exhibits) for your reference. If you need, I can overnight mail you a copy of the complaint with all exhibits.

In this case, I think it makes sense for you to accept service, and look forward to your response.

My contact information is below.

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Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

May 26, 2006

VIA PERSONAL DELIVERY

WRITER'S DIRECT LINE
310.975.7837
jnguyen@foley.com EMAIL

CLIENT/MATTER NUMBER
075181-0108

Michael Holtz, Esq.
LAVELY & SINGER
2049 Century Park East
Suite 2400
Los Angeles, CA 90067

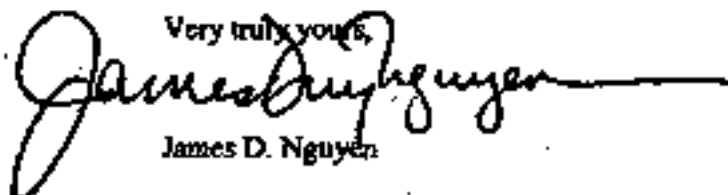
Re: *Transcontinental Records, Inc. vs. Aaron C. Carter*
L.A.S.C. No. BC349317

Dear Mr. Holtz:

As you know, we represent Transcontinental Records, Inc., which has filed the above-entitled action against Aaron C. Carter. This will confirm, per your e-mail yesterday, that you are representing Aaron Carter and have agreed to accept service of the summons and complaint in this action. The summons and complaint and related papers are enclosed.

Please counter-sign below and fax this letter back to me. We can treat the service date as the date you receive this package via hand delivery. I appreciate your professional courtesy in this regard.

Very truly yours,



James D. Nguyen

Enclosures included are:
Summons and Complaint
Civil Case Cover Sheet and Addendum
Notice of Case Assignment
ADR Documents from LA Superior Court

On behalf of defendant Aaron C. Carter, I am authorized to, and do, accept service of the summons and complaint in the action entitled, *Transcontinental Records, Inc. vs. Aaron C. Carter*, Los Angeles Superior Court Case No. BC349317. I received the summons and complaint on _____, 2006, and accept service as of that date.

Michael Holtz, Esq., on behalf of defendant
Aaron C. Carter

June 2, 2006

VIA FACSIMILE AND U.S. MAIL

WRITER'S DIRECT LINE
310.975.7897
jnguyen@foley.com EMAIL

CLIENT/MATTER NUMBER
075181-0108

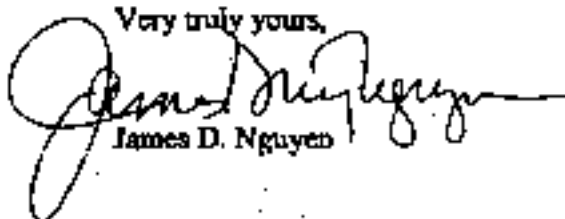
Michael Holtz, Esq
LAVELY & SINGER
2049 Century Park East
Suite 2400
Los Angeles, CA 90067

Re: *Transcontinental Records, Inc. vs. Aaron C. Carter*
L.A.S.C. No. BC349317

Dear Mr. Holtz:

After you agreed by e-mail on May 25 to accept service on behalf of Aaron Carter, we served you with the summons and complaint by hand delivering the documents to your office on May 26. You have not returned a counter-signed version of my May 26 letter as I requested. While your counter-signature would have been helpful, it is not necessary given your prior agreement to accept service. Thus, this will confirm that service was made on May 26 when the documents were hand delivered to your office and signed for by your office (which as you know is the office tower right next door to our law firm).

Very truly yours,



James D. Nguyen

Nguyen, James D.

From: Nguyen, James D.
Sent: Monday, June 05, 2006 2:03 PM
To: 'Michael Holtz'
Subject: RE: Transcon/Carter

Thanks for the confirmation.

-----Original Message-----

From: Michael Holtz [mailto:mholtz@lavelysinger.com]
Sent: Friday, June 02, 2006 7:20 PM
To: Nguyen, James D.
Subject: Transcon/Carter

James:

I thought I had signed and returned the Notice and Acknowledgment re service, but that's fine, service was made on May 26.

Regards,

Michael

MICHAEL D. HOLTZ, ESQ.

LAVELY & SINGER

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

2049 Century Park East, Suite 2400

Los Angeles, California 90067-2906

Telephone: (310) 556-3501

Facsimile: (310) 556-3615

Website: www.lavelysinger.com

E-Mail: mholtz@lavelysinger.com

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Nguyen, James D.

From: Michael Holtz [mholtz@lavelysinger.com]
Sent: Monday, June 19, 2006 12:54 PM
To: Nguyen, James D.
Subject: Transcon/Carter

James:

I assume you are aware that there is an action pending in the Orange County Circuit Court in Florida wherein Carter is seeking, *inter alia*, to enjoin Pearlman/Transcon/Pearlman Enterprises from prosecuting the LASC action. I also assume you were aware of the Florida action at the time you requested that I accept service on behalf of Carter in the LASC action, considering your firm represents the Defendants in the Florida action. In any event, in order to save judicial time and resources, as well as unnecessary expenditure of fees by the parties, I hereby request that we stipulate to extend the date for Carter to file a responsive pleading to the LASC action until after July 2, 2006 (the date currently set for the injunction hearing in the Florida action). We should wait to find out the Florida Court's ruling before we proceed with the LASC action. Please let me know if you will agree to stipulate that Carter's response to the LASC action is continued until after July 2. Thank you for your anticipated courtesy and cooperation.

Sincerely,

Michael

MICHAEL D. HOLTZ, ESQ.

LAVELY & SINGER

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6/26/2006

Nguyen, James D.

From: Nguyen, James D.
Sent: Wednesday, June 21, 2006 3:38 PM
To: 'Michael Holtz'
Cc: Gay, Michael
Subject: FW: Aaron Carter Agreement

From the Desk of: James D. Nguyen

FOLEY
FOLEY & LARDNER LLP

Hi Michael – I know you sent me an e-mail on Monday asking for an extension of time to respond to our complaint in the California action until after July 2 (when Aaron Carter's Florida lawyers have set an injunction hearing).

Please see below an e-mail that my Florida colleague has sent to Clay Townsend, who (as I assume you know) is representing Aaron in the Florida case. Specifically, we have asked Clay to agree to stay the proceedings in Florida until the Los Angeles Superior Court determines issues related to judicial approval of the record contract. If Clay is not willing to stay the proceedings in Florida for such purpose, we are prepared to seek a TRO and/or preliminary injunction in the Los Angeles case to enjoin Aaron from proceeding with the Florida case until the Los Angeles case is decided. I want to advise you of our intentions in this regard.

INFO

—Original Message—

From: Gay, Michael
Sent: Wednesday, June 21, 2006 12:47 PM
To: 'Clay Townsend'
Cc: Nguyen, James D.
Subject: Aaron Carter Agreement

Clay - You had requested that I review the Exclusive Recording Artist Agreement (the "Agreement") and your pleadings and respond to your request that we consent to staying the California proceedings. As I indicated in our conversations, we believe that the proper jurisdiction is in California where we previously filed our action. Upon review of your pleadings and the Agreement, I remain convinced that jurisdiction is proper in California.

In paragraph 32 of your Complaint, you allege that the "Recording Agreement provides at Paragraph 13(a) that the Recording Agreement was entered into in the State of Florida and that its validity, interpretation and legal effect shall be governed by the laws of the State of Florida." What you fail to include is the continuation of that sentence, which states: "except that the law of the jurisdiction in which this agreement is approved pursuant to paragraph 18 below shall control the interpretation of this agreement as to issues of judicial approval of the agreement." As you acknowledge in Paragraph 35 of your Complaint, the Superior Court of the State of California, County of Los Angeles, exercised jurisdiction over the Agreement and approved it. Your Complaint goes on to attack that judicial approval and seeks relief based upon what you allege were problems with the judicial approval in California. Such actions fall within the "except" clause above and it is therefore proper for the California court system to maintain its jurisdiction in order to determine the "issues of judicial approval of the agreement."

Based on the foregoing, please advise whether you will agree to stay the proceedings in Florida until such time as the California Superior Court determines the issues regarding the judicial approval of the agreement raised in your Complaint.

Michael Gay

6/26/2006

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